

**CASE NO. 16-71915 [CONSOLIDATED WITH 17-70532 AND 17-70632]**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ROBERT C. MUNOZ,

Charging Party,

v.

NATIONAL LABOR RELATIONS  
BOARD,

Respondent.

TARLTON & SON, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS  
BOARD,

Respondent.

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

v.

TARLTON & SON, INC.

Respondent.

Case No. 16-71915

Board Case Nos.  
32-CA-119054  
32-CA-126896

Case No. 17-70532

Board Case Nos.  
32-CA-119054  
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Case No. 17-70632

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**ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD  
CASE NO. 32-CA-119054 AND 32-CA-126896, 363 NLRB NO. 175**

**PETITIONER ROBERT C. MUNOZ'S OPPOSITION TO MOTION OF  
THE NATIONAL LABOR RELATIONS BOARD TO STRIKE PORTION  
OF OPENING BRIEF**

1. The Board concedes that Mr. Munoz (“Petitioner”) is aggrieved because he did not receive all of the remedies which he sought before the Board.
2. The issues which the Petitioner has raised all support the Board’s Decision and Order and thus directly support the effort to obtain additional remedies. If this Court were to reverse the Board’s Decision in whole or in part, then the remedies obtained as well as those additional remedies sought would be mooted. Thus, in a very significant and direct way, the portions of the Brief which the NLRB challenges go to support the aggrievement with respect to remedies.
3. The issues raised by the Petitioner are primarily in response to the argument by Tarlton & Son, the Respondent Employer, that the Federal Arbitration Act governs and that the issues regarding its unilateral arbitration procedure is valid. The issues raised in the Opening Brief as we explained in that brief all went to responding to the arguments of the Respondent which it made before the Board .
4. The additional theories which Petitioner advanced before the Board are all consistent with the Board’s finding that Tarlton & Son violated Section 8(a)(1), 29 U.S.C. Section 158(a)(1) by limiting the right of the employees to engage in concerted, collective activity. Nothing in those arguments undermines or contradicts or is not encompassed within the General Counsel’s theory of the case and the Board’s findings that Tarlton & Son violated Section 8(a)(1).
5. Petitioner, would be entitled to raise these issues in his Intervenor’s brief which it will file after Tarlton & Son files and the National Labor Relations Board file their brief. There is nothing improper about raising these issues which necessarily will come before this Court in this context for reasons cited above.

6. Additionally, this is an issue which should be referred to the Merits Panel. Whether or not these issues are before the Board in this court will depend upon the entire record as well as the arguments made by Tarlton & Son and the National Labor Relations Board.

7. There is presently pending before the Court, a Motion to Stay Proceedings. That Motion is supported by the National Labor Relations Board and Tarlton & Son. Petitioner and Intervenor, Robert C. Munoz, has opposed that Motion. Petitioner submits the Motion should be denied because there are issues in this case which will not necessarily resolved by the cases pending before the Supreme Court. For example, Tarlton & Son improperly implemented the unlawful arbitration agreement in response to protected concerted activity. This finding does not hinge on the lawfulness of the arbitration procedure. Additionally the Federal Arbitration Act does not apply to Tarlton & Sons' truck driver.

8. For these reasons the Motion to Strike Portions of the Opening Brief should be denied. The Court should not stay the briefing in this case. It should require that the National Labor Relations Board and Tarlton & Son file their respective briefs.

Dated: May 8, 2017

Respectfully Submitted,

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

/s/ David A. Rosenfeld  
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Attorneys for Intervenor,  
ROBERT C. MUNOZ

## CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the withing action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501. I certify that on May 8, 2017, the PETITIONER ROBERT C. MUNOZ'S OPPOSITION TO MOTION OF THE NLRB TO STRIKE PORTION OF OPENING BRIEF was served on all parties or their counsel of record through CM/ECF system as addressed below.

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I certify that the above is true and correct. Executed at Alameda, California, on May 8, 2017.

/s/Katrina Shaw

Katrina Shaw